

***United States Court of Appeals
for the Second Circuit***



JOINT APPENDIX

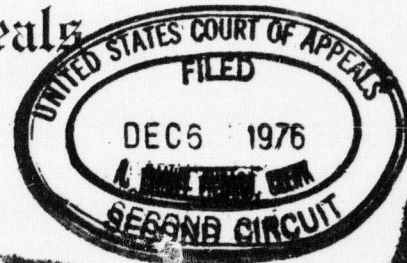
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76-6162

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 76-6162



LOIS HOPE SMALL and VEDA MAY POUNDSON
also known as GORDON,
Plaintiffs-Appellees,
—against—

MAURICE F. KILEY, District Director, United States
Immigration and Naturalization Service; and
LEONARD P. CHAPMAN, Commissioner, Immigra-
tion and Naturalization Service,
Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

JOINT APPENDIX

DAVID G. TRAGER,
United States Attorney,
Eastern District of New York.

PAGINATION AS IN ORIGINAL COPY

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DIST/OFFICE	DOCKET YR. NUMBER	FILING DATE MO. DAY YEAR	J	N/S	O	R	23	DEMAND OTHER	JUDGE NUMBER	JURY DEM.	DOCKET YR. NUMBER
76C	747	07 23 76	2	460	1	APPEAL			W. J. NEAHER, J.		

PLAINTIFFS

SMALL, LOIS HOPE & ANO

LOIS HOPE SMALL and VEDA MAY POULSON
a/k/a GORDON

DEFENDANTS

I.N.S.

MAURICE F. KILEY, District Director
United States Immigration and
Naturalization Service; and LEONA
P. CHAPMAN, Commissioner, Immigration
and Naturalization Service

CAUSE

28 USC 1346 - action on alledged unlawful deportation proceedings
Immigration and Nationality Act - to compel agency action

ATTORNEYS

For PLNTFF:
LEON ROSEN, ESQ.
60 East 42 Street
New York, New York 10017
212-972-0870

For DEFENDANTS:
U.S. Atty EDNY
By Richard P. Caro

☐ CHECK
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IF CASE WAS
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FILING FEES PAID			STATISTICAL CARDS	
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			JS-5	

66C 646

SMALL & ANO vs I.N.S.

DATE	NR.	PROCEEDINGS	A	2
4-23-76		Complaint filed. Summons issued.		
4-30-76		Summons ret and filed/executed.	(1)	(cg)
5-15-76		ANSWER filed.	(2)	
7-29-76		Before NEAHer, J.- Case called for conf Motion conf held	(3)	
8-3-76		BY PRATT, J. - Order to show cause ret. 8-4-76 at 9:45 AM why an order should not be made staying the depositions of defts Chapman and Kiley and dismissing the complaint etc. filed with memo of law in support.		
8-4-76		Notice of motion ret 8-13-76 re: to calendar for naturalization filed.	(5)	
8-4-76		By PRATT, J.- Order to show cause with proof of service ret. 8-13-76 to stay deportation proceedings filed.	(6)	
8-4-76		By PRATT, J.- Order staying depositions pending hearing of motion on 8-13-76 filed on doc.#3.		
8-12-76		Deft's memorandum of law in opposition to plttfs' application for stay of deportation filed.		
8-13-76		Before PRATT, J.-Case called. OTSC with stay of immigration expulsion proceedings. Written decision to follow.	(7)	
8-19-76		Notice to take deposition of Leonard P. Chapman filed.	(8)	
8-19-76		Notice to take deposition of Maurice F. Kiley filed.	(9)	
8-19-76		Plntffs request for production of documents filed.	(10)	
9-1-76		By PRATT, J Memorandum & Order dtd 8-31-76 adjourning the motion to dismiss and referring motion to J. NeaHer etc filed. See Memo. Copies mailed to parties. mg	(11)	
10-8-76		Notice of appeal by USA filed.	(12)	

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

A 3

-----X
LOIS HOPE SMALL

and

VEDA MAY POULSON

a/k/a GORDON

76C 747

Plaintiffs

v.

COMPLAINT

MAURICE F. KILEY,
District Director
United States Immigration and
Naturalization Service; and
LEONARD P. CHAPMAN,
Commissioner
Immigration and Naturalization Service

Defendants
-----X

Plaintiffs, by their Attorney, LEON ROSEN, ESQ., com-
plain of the defendants and allege as follows:

FIRST: This an action for a declaratory judgment
under the Declaratory Judgment Act (28U.S.C.2201); for review
under the Administrative Procedure Act (5U.S.C.706) and for an
order compelling agency action under Rule 31(b) of the Federal
Rules of Civil Procedure.

SECOND: Plaintiffs reside at 615 Rogers Avenue, Count
of Kings, City and State of New York. Plaintiff, Veda May Poul-
son is the mother of plaintiff, Lois Hope Small.

THIRD: Defendant, Maurice F. Kiley, is the District
Director of the Immigration and Naturalization Service, Depart-
ment of Justice, and is charged with the faithful administra-
tion of the immigration and nationality laws in the District of
New York.

FOURTH: Defendant, Leonard P. Chapman, is Commissio

of the Immigration and Naturalization Service, and in that capacity, is charged with the faithful administration of the immigration and nationality laws throughout the United States.

FIFTH: Plaintiff, Lois Hope Small, is a lawful permanent resident of the United States. She was admitted to the United States for permanent residence on May 26, 1968 and was issued alien registration card No. A17 603 224. During the month of January 1976, she filed an application with the Immigration and Naturalization Service, pursuant to 8U.S.C.1427, to petition this court for naturalization. Upon information and belief, she is fully qualified for citizenship.

SIXTH: Plaintiff, Veda May Poulson, is a native and citizen of Jamaica, who was admitted as a tourist on August 2, 1964 and has remained in the United States ever since. Upon the naturalization of plaintiff, Lois Hope Small,, a petition will be filed with the Immigration and Naturalization Service, pursuant to 8U.S.C.1151(b) and 8U.S.C.1154(a) to classify Veda May Poulson as an "Immediate Relative" of a United States citizen, rendering a visa immediately available to her.

SEVENTH: It is the practice and policy of the defendants to permit the spouses, unmarried minor children, and parents of United States citizens over the age of twenty-one years, to remain in the United States while pursuing applications for the issuance of permanent residence visas.

EIGHTH: On or about March 1, 1976, the defendant, Maurice F. Kiley, caused an order to show cause, pursuant to 8C.F.R.242.1, to be issued and served upon plaintiff, Veda May Poulson, directing her appearance before an immigration judge, to show cause why she should not be deported from the United States. Upon information and belief, the defendant, Maurice F.

Kiley, intends to take appropriate steps to enforce the departure from the United States of plaintiff, Veda May Poulson. Upon further information and belief, the defendant, Maurice F. Kiley, has willfully and deliberately delayed, deferred and prevented the prompt and expeditious processing of the application for citizenship of plaintiff, Lois Hope Small, for the express purpose of proceeding with the deportation proceedings against plaintiff, Veda May Poulson.

NINTH: That on or about September 13, 1973, the defendant, Leonard P. Chapman, in his official capacity as Commissioner of the Immigration and Naturalization Service, issued a set of priority directives, which essentially deployed the personnel of the Immigration and Naturalization Service from adjudication of applications and petitions designed to provide benefits to United States citizens and aliens, and emphasizing instead the rigid enforcement of the immigration laws. Upon information and belief, the priorities directive of the defendant, Leonard P. Chapman, has caused irreparable injury to the plaintiffs herein by deferring and delaying those proceedings which would acquire permanent residence status for the plaintiff, Veda May Poulson. The priorities directive of the defendant, Leonard P. Chapman, were in violation of his powers, duties and obligations under 8U.S.C.1103.

TENTH: The refusal of the defendants to defer the deportation proceedings pending against Veda May Poulson and the delay of the defendants in the processing of the application for citizenship of plaintiff, Lois Hope Small, is arbitrary, capricious, unreasonable, and contrary to law.

WHEREFORE, plaintiffs pray for a judgment declaring that,

(a) Restraining the defendants from proceeding with deportation proceedings against Veda May Poulson.

(b) Directing the defendants to proceed forthwith with the application of Lois Hope Small for citizenship

(c) For such other and further relief as may be just and proper.



LEON ROSEN, ESQ.
Attorney for Plaintiffs
Office & P.O. Address:
60 East 42 Street
New York, N.Y. 10017
Telephone No. (212) 972-0870

CIS:RPC:ec
F. #760602

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

A 7

----- X

LOIS HOPE SMALL, et al.,

Plaintiffs,

AFFIDAVIT

- against -

Civil Action
No. 76 C 747

MAURICE F. KILEY, et al.,

Defendants.

----- X

STATE OF NEW YORK)
) ss.:
COUNTY OF KINGS)

RICHARD P. CARO, being duly sworn, deposes and says:

1. I am an Assistant United States Attorney in the office of DAVID G. TRAGER, United States Attorney for the Eastern District of New York, and in this capacity I have been assigned the responsibility of representing the defendants in the above entitled action.

2. The above action was commenced on or about ^[April 23] ~~June 22~~, 1976. The crux of the complaint is that Immigration and Naturalization Service (INS) is taking too long to process Ms. Small's application for naturalization and that unless Ms. Small becomes a citizen before an order of deportation of her alleged mother, Ms. Paulson, is issued, the latter will be deported. Accordingly, plaintiffs ask in the complaint for an order restraining Ms. Paulson's deportation proceedings from going forward, and directing defendants to proceed forthwith with Ms. Small's application for citizenship.

3. On or about June 16, 1976, plaintiffs served defendants by mail notices for the depositions of INS Commissioner Chapman and INS District Director Kiley to take place on June 28, 1976.

4. I subsequently contacted plaintiffs' attorney, Leon Rosen, and requested an adjournment because I was currently tied up in the litigation of an expedited action. I also advised him of my intention to file a motion for dismissal and requested that depositions be adjourned pending determination of the motion. Mr. Rosen said he would not agree to an adjournment unless I agreed to a comparable stay of Ms. Paulson's deportation proceedings. I told Mr. Rosen that I had no authority to adjourn the deportation proceedings since INS still had jurisdiction of the matter. I also advised him that in my opinion any stay of deportation proceedings would be prejudicial to plaintiffs in this action. Notwithstanding, Mr. Rosen suggested that I contact INS to ascertain if they would be amenable to the adjournment of the deportation proceedings. INS was contacted and subsequently agreed to only a month's adjournment of the deportation proceedings. Mr. Rosen and I thereupon agreed to enter into a stipulation adjourning the depositions but only on condition that it be further expressly stipulated that such an adjournment would be without prejudice to defendants' rights to move for dismissal of the action including on the grounds of prematurity and lack of ripeness. It was further agreed that should it be necessary for the depositions to take place that Mr. Chapman's deposition would take place in Washington, D.C., at a place and time to be subsequently agreed upon by counsel, and Mr. Kiley's in New York at a date later to be agreed upon.

5. Mr. Rosen agreed to draft the stipulation. On or about July 14, 1976, Mr. Rosen mailed to me a letter and draft of a stipulation which are appended hereto as Exhibit A. The terms of the stipulation did not reflect our

agreement and it proposed that the deposition of both defendants take place on August 3, 1976, in Mr. Rosen's office. Upon receipt of this letter and stipulation, I telephoned Mr. Rosen's office and was advised that Mr. Rosen was out of town. I spoke with another attorney in Mr. Rosen's office, a Mr. Bloom (phonetic), and advised him of my objection to the stipulation, that a motion for dismissal was being prepared and that I was again requesting that the depositions be stayed pending the determination of the motion. On or about July 21, 1976, I spoke with Mr. Rosen of the above and was advised that he would not agree to a further adjournment of the depositions unless the deportation proceedings were also adjourned. I again advised him of my lack of authority to so stipulate. We did agree, however, to a revision of the stipulation which has not yet been effected since I am waiting to be advised when Mr. Chapman would be available to be deposed. I have been advised that Mr. Kiley will be unavailable during the first three weeks in August. In our telephone conversation of July 21, 1976, I told Mr. Rosen that the motion for dismissal would be made before August 3rd and that a stay of all depositions would be also requested.

6. On July 29, 1976, I learned that the action had been reassigned to the Hon. Edward R. Neaher and in accordance with his practice arrangements were made for a pre-motion conference for 5:00 P.M. that same day. At the pre-motion conference, counsel for both parties appeared and apprised the Court of the situation. The Court, while agreeing with my position that neither I nor the Court had any authority at this time to interfere in the INS deportation proceedings, instructed me to suggest to INS that the deportation proceedings be stayed as the "quid pro quo" for

the stay of the depositions. I indicated my deep reservations about making any suggestions and advised the Court of my strong doubts about INS agreeing to the stay. I, however, agreed to make the suggestion as being the Court's recommendation. On July 30, 1976, I called INS and learned that Mr. Rosen had already advised INS of the Court's suggestion. Later that day, I was told that the Administrative Law Judge refused to act on this suggestion and required a formal motion to be made

7. Previously on July 29, 1976, Mr. Rosen told Judge Neaher at the pre-motion conference that even if the deportation proceedings were not stayed, he was not insisting on either Mr. Kiley's or Mr. Chapman's deposition taking place on August 3rd. After learning that INS refused to act on the suggestion, I telephoned Mr. Rosen at approximately 2:30 p.m. and he told me that he was going to have Judge Neaher call a conference that day, that unless the problem was solved that he would insist on the depositions taking place on August 3rd, and that he would attempt to obtain a T.R.O. restraining the deportation hearings. He again telephoned me at approximately 5:15 p.m. and told me that Judge Neaher refused to call a second conference and advised that the parties make their respective motions before the miscellaneous judge. He also told me to have Mr. Kiley be available to be deposed on Tuesday, August 3, even though Mr. Kiley had already left for his vacation. Finally, he told me that he would move by Order to Show Cause to stay the deportation proceedings and that he would make it returnable on August 4, 1976.

8. Defendants apply for an immediate order staying discovery for the following reasons;

a. The defendants are moving simultaneously for dismissal of the action. As a reading of the accompanying Memorandum of Law will show, there is no viable or bona fide cause of action present. The depositions should thus be stayed until the motion for dismissal is decided in order that these high government officials will not be needlessly called away from their duties.

b. The depositions should also be stayed because if on August 5th, Ms. Paulson either agrees to voluntary departure or if she is found not deportable, then this action is moot. If, however, she is found deportable, then this Court will clearly not have jurisdiction but rather the Court of Appeals under 8 U.S.C. §1105(a) will have exclusive jurisdiction since this action is directed towards the merits and validity of a final order of deportation. Thus even before the depositions could be held the action in this Court will have terminated.

c. Finally, the depositions of Mr. Chapman and Mr. Kiley are wholly unnecessary at this time. It is doubtful that either defendant knows anything about either plaintiff. Other officials who would be best able to testify how INS's policies affected plaintiffs' agency proceedings have not been called and no interrogatories requesting data about the length of time for an application for naturalization have been served. Mr. Chapman and Mr. Kiley's testimony, at best, would serve no useful purpose at this time. Thus in light of the meritorious grounds for dismissal, the Court should stay their depositions.

Richard P. Caro
RICHARD P. CARO

Sworn to before me this
24 day of August 1976

Prosper K. Parkerton

PROSPER K. PARKERTON
Notary Public, State of New York
No. 24-3019530
Qualified in Kings County
Commission Expires March 30, 1977

CARO / 760602

TELEPHONE: (212) 972-0870

LAW OFFICES
OF
LEON ROSEN
60 EAST 42ND STREET
NEW YORK, N. Y. 10017
SUITE 458

LEON ROSEN
BARRY BLOOM

July 14, 1976

Richard Caro, Esq.
United States Attorneys Office
225 Cadman Plaza
Brooklyn, New York 11201

Re: Small and Poulson v. Kiley
and Chapman
76C 747

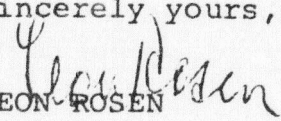
Dear Mr. Caro:

I refer to our telephone conversation of several weeks ago, wherein we agreed to adjourn the depositions of the defendants in the above entitled action and to adjourn the deportation hearing of the plaintiff Poulson.

I have received a notice from the Immigration and Naturalization Service, copy of which I enclose, rescheduling the deportation hearing to August 5, 1976. I, therefore, enclose herewith a stipulation rescheduling the depositions for Tuesday, August 3, 1976 at 10:00 A.M. in my office.

Please sign and return the original and one copy of the stipulation. The additional copy is for your files.

Sincerely yours,


LEON ROSEN

LR:fk
Enc.

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

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LOIS HOPE SMALL

and

VEDA MAY POULSON

a/k/a GORDON

Civil Action No.
76C 747

Plaintiffs

STIPULATION

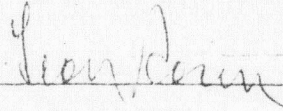
v.

MAURICE F. KILEY,
District Director
United States Immigration and
Naturalization Service; and
LEONARD P. CHAPMAN,
Commissioner
Immigration and Naturalization Service

Defendants

-----X

IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for the respective parties herein, that the depositions, upon oral examination, pursuant to Federal Rules of Civil Procedure, noticed for June 28, 1976, at the office of plaintiffs' attorney, Leon Rosen, 60 East 42 Street, New York, N.Y. 10017, be and the same hereby are adjourned until August 3, 1976, at the same place as originally noticed at 10:30 A.M.


Leon Rosen
Attorney for Plaintiffs

United States Attorney
Attorney for Defendants

Dated: New York, N.Y.
July 14, 1976

In the Matter of the Petition
for Naturalization of

AFFIDAVIT

LOIS HOPE TELL

Petition No. 805305
Immigration File No. A17 603 224

State of New York)
County of New York) ss.

I, [Name], being duly sworn, depose and say:
That I am the attorney of record for the petitioner herein and am fully familiar with all of the facts and legal issues upon which this motion is based.

That on June 9, 1976, the petitioner was examined by an official of the Citizenship Branch of the United States Immigration and Naturalization Service at its offices at 175 Ram- sen Street, Brooklyn, New York. Two United States citizen wit- nesses, in support of the application, were also examined on that date. Upon the conclusion of the examination, the peti- tioner filed a formal petition for Naturalization and paid the required filing fee.

That the petitioner is fully qualified in all res- pects for Naturalization. She meets the statutory requirements regarding residency, literacy, knowledge of principles of the United States Government, and attachment to the principles of the Constitution of the United States. She has no criminal record, has never been a member of the Communist Party, nor has she advocated Communism. She is not mentally ill. She is gain- fully employed and has always paid her taxes.

A 15

That the Immigration and Naturalization Service delayed calendaring the petitioner's petition, without good cause.

That upon information and belief, the only reason why the Immigration and Naturalization Service has not calendared petitioner's petition is because she and her mother, Veda May Poulson, are plaintiffs in an action pending in this Court before Hon. Edward R. Neaher, under Docket No. 76C747, in which the defendants are Maurice P. Kiley, District Director of the New York District United States Immigration and Naturalization Service, and Leonard P. Chapman, Commissioner, United States Immigration and Naturalization Service. In that case, the plaintiffs seek to enjoin the conduct of deportation proceedings against the plaintiff, Poulson. They also seek an order compelling the expeditious processing of the application for citizenship of the plaintiff, Lois Hope Small (an interview by an immigration official, resulting in the filing of the instant petition, did not take place until after the action was commenced; approximately six months after the filing of an application to petition for Naturalization). The complaint also seeks a declaratory judgment that the defendant, Chapman, in his official capacity as Commissioner of the Immigration and Naturalization Service, by the issuance of a set of priority directives on or about September 13, 1973, which directed the deployment of personnel from adjudication of applications and petitions designed to provide benefits to United States citizens and aliens, in favor of the performance of other duties, violated his powers, duties and obligations under 8USC1103 to faithfully administer the immigration laws of the United States.

16

That despite the fact that Veda May Poulson is the natural mother of petitioner, and that she has resided in the United States in excess of twelve years, the Immigration and Naturalization Service instituted deportation proceedings against her and upon information and belief, seeks to deport her from the United States, thus separating the petitioner from her mother, despite an overriding public interest and Congressional intent in favor of the preservation of family unity.

That upon the admission of petitioner to citizenship, she will be in a position to petition the Immigration and Naturalization Service for "Immediate Relative" status in behalf of her mother, under the provisions of 8USC1151(b). A visa number will be immediately available to her mother and she will be able to acquire permanent residence status. Furthermore, under existing internal operating instructions of the Immigration and Naturalization Service, O.I. 242.10(a)(6), the District Director will be authorized and required to permit the said Veda May Poulson to remain in the United States, while awaiting the issuance of an immigrant visa.

That this Court has inherent power to direct the control of its calendars. Under the circumstances, set forth in this affidavit, it is clear that the Immigration and Naturalization Service is attempting to interfere with those inherent powers.

WHEREFORE, deponent prays that an order issue directing the Immigration and Naturalization Service to calendar the case of LOIS HOVE SMALL for Naturalization, so that the case may be heard before a United States District Court Judge, who may then determine her eligibility for Naturalization and for such other relief as may be proper.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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Carr

A 17

In the Matter of the Petition for
Naturalization of

LOIS HOPE SMALL

NOTICE OF MOTION TO
CALENDAR FOR NATURALI-
ZATION

Petition No.: 805805
Immigration File No.:
A17-603-224


S I R

Whereas the undersigned has read the annexed affidavit of
Leon Rosen, Esq., the undersigned will move this Court at a
Motion Term thereof to be held in Room 6, United States
Courthouse, 235 Cadman Plaza East, Borough of Brooklyn, City
and State of New York, on the ~~13th~~ day of August, 1976, at ten
o'clock in the forenoon of that day, or as soon thereafter as
counsel can be heard for an order to require the United States
Immigration and Naturalization Service to calendar the case of
LOIS HOPE SMALL for Naturalization

PLEASE TAKE FURTHER NOTICE that the answering affida-
vit, if any, and any memorandum of law, shall be served upon
the undersigned on least one day prior to the return date of
this motion.

Dated: New York, New York
August 5, 1976

Yours, etc.


LEON ROSEN
Attorney for Petitioner
60 East 42 Street
New York, N.Y. 10017
(212) 972-0870

To: SA [redacted]
District Director
U.S. Immigration and Natl. Service
20 West Broadway

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF NEW YORK

A

18

----- x
LOIS HOPE SMALL

and

VEDA MAY POULSON

a/k/a GORDON

Plaintiffs

AFFIDAVIT

76C747
(BRM)

v.

MAURICE F. KILEY,
District Director
United States Immigration and
Naturalization Service; and
LEONARD P. CHAPMAN,
Commissioner
Immigration and Naturalization Service

Defendants
----- x

State of New York)
) ss:
County of New York)

LEON ROSEN, ESQ., being duly sworn, deposes and says:

10 days
1. I am the attorney for the plaintiffs in the above
entitled action and submit this affidavit in support of an ap-
plication for a temporary restraining order, restraining the
defendants, their agents, servants, and employees from the con-
duct of deportation proceedings against the plaintiff, VEDA MAY
POULSON, from taking any steps to effectuate expulsion from the
United States of the said VEDA MAY POULSON.

2. That this action was commenced on or about
April 23rd, 1976.

3. Plaintiff Poulson is the mother of plaintiff SMALL.
She has resided in the United States in excess of twelve years.
That on or about March 1, 1976, the defendant, MAURICE F. KILEY,
caused an order to show cause to be issued and served upon her,
directing her appearance before an immigration judge, to show
cause why she should not be deported from the United States.

4. Plaintiff SMALL is a lawful permanent resident of the United States. During the month of January, 1976, she filed an application with the Immigration and Naturalization Service to petition this Court for Naturalization. A preliminary interview by an officer of the Immigration and Naturalization Service attached to the Citizenship Branch, was not conducted until June 9, 1976, following the institution of the instant action. On that day, she petitioned this Court for Naturalization and paid the appropriate fee. Her case has not been calendared despite the fact that she is fully eligible for citizenship in every respect.

5. Upon the admission to citizenship of plaintiff SMALL, she will petition the Immigration and Naturalization Service under 8USC1151(b), to classify the plaintiff POULSON as an "Immediate Relative", exempt from the numerical limitation for persons born in the Western Hemisphere and exempt from the labor certification requirement of 8USC1182(a)(14). Under the applicable internal operating instructions of the Immigration and Naturalization Service, C.I.242.10(a)(6), the defendant KILEY, as the District Director of the New York District, will be obligated to permit the plaintiff POULSON to remain in the United States unmolested, while awaiting the issuance of a permanent residence visa by an American consular officer.

6. That on or about June 16, 1976, deponent served notices for the depositions of the defendants. The complaint raises a substantial issue of novel impression. In September of 1973, the defendant, CHAPMAN, issued to personnel of the Immigration and Naturalization Service a set of priority directives which essentially deployed personnel from the performance of those duties in the adjudication of applications and petitions designed to confer benefits upon United States citizens and lawful resident aliens to the rigid enforcement of the immigration laws. As a result of these priority directives, substan-

tial unconscionable delays have occurred in the processing of virtually every Service function other than the interrogation of persons who appear to be of foreign birth, the arrest and incarceration of aliens, and the expeditious deportation of aliens. United States citizens petitioning on behalf of their spouses, are made to wait in excess of one year for an adjudication on their petitions. Applicants for United States citizenship, such as plaintiff SMALL, are delayed for unconscionable periods of time. This case seeks a declaratory judgment that the priorities directive of defendant CHAPMAN violated his powers, duties and obligations under 8USC1163 to faithfully administer the immigration laws of the United States. The depositions of the defendants were sought with respect to the priorities directives, and with respect to any willful and deliberate delay in the processing of the application for citizenship of plaintiff SMALL.

7. That the deportation hearing for plaintiff POULSON was adjourned administratively until August 5, 1976, pursuant to an informal agreement between Richard P. Caro, Esq., Assistant United States Attorney in charge of this litigation and myself. At the same time that that informal understanding was reached, the depositions of the defendants were adjourned from the originally scheduled date, June 28, 1976, until August 3rd, 1976. I note that on August 3rd, neither defendant appeared for deposition, although, at the time for their scheduled appearance, there existed no agreement to adjourn, nor any Court order of protection.

8. This case was originally assigned to the late Hon. Orrin J. Judd. Upon the decease of Judge Judd, the case was reassigned to Hon. Edward R. Neaher. On Thursday afternoon, July 29, 1976, at the request of Mr. Caro, I appeared before Judge Neaher for a conference of the issues. I was previously informed by Miss Ann Stanley, law clerk to Judge Neaher, that

the Judge had not requested the conference, but that Mr. Caro had sought to move for an order of protection and for a dismissal of the complaint and that it was the practice of Judge Neaher to entertain no motions until he had conferenced a case. It is my recollection that the conference lasted in excess of thirty minutes. Judge Neaher informed Mr. Caro that no need existed for an order of protection, because I had offered to defer taking of depositions. The Judge agreed with my contention, however, that there ought be a "quid pro quo", and that the Immigration and Naturalization Service ought adjourn the deportation hearing calendared for August 5, 1976, until either the plaintiff SMALL had been sworn into U.S. citizenship or at least until Judge Neaher returned from a vacation for the entire month of August, so that appropriate motions might be directed to him. Judge Neaher was leaving on his vacation one business day following our conference. There was insufficient time to prepare and present to him an appropriate order for service upon the defendants. There was a clear expectation on my part, and I believe on the part of Judge Neaher, that the defendants would honor his recommendation. Unfortunately, that did not happen, for I have been informed by Mr. Caro and by the appropriate officials of the Immigration and Naturalization Service that they will not honor nor consider the recommendation of Judge Neaher and that they insisted on proceeding with the deportation hearing of plaintiff POULSON.

9. That this case presents a classic illustration of an agency "squeeze play". On the one hand, the agency claims that it has had insufficient time to process the application for citizenship of plaintiff SMALL. On the other hand, it moves with speed and dispatch to remove from the United States, her mother.

Sworn to before me this 3rd
day of August 1976.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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In the Matter of the Petition for
Naturalization of

: Petition No. 805805
: A17 603 224
:

LOIS HOPE SMALL
----- X

APPLICATION FOR ADJOURNMENT OF
NOTICE OF MOTION TO CALENDAR
FOR NATURALIZATION

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss:

NINA E. CAMERON, being duly sworn deposes and says:

That I am the District Counsel of the U. S. Immigration and Naturalization Service.

On June 9, 1976, petitioner filed her Petition for Naturalization. At that time the Naturalization Examiner found discrepancies in her statements when comparing the facts given by her to the American Consul in her application for a permanent resident visa. She entered the United States as a permanent resident on May 26, 1968. In her application for a visa she stated her mother's name was Ouida Gordon and her father's, Sydney Small.

She now alleges that Veda May Poulson is her mother. The Naturalization Examiner is given the authority to investigate petitioners for naturalization under Sec. 335c.1 of 8 C.F.R.

This case was recently sent to Investigations on June 14, 1976 for possible fraud. It may be petitioner is claiming someone to be her mother, who in fact may not be related to her. In a case such as this an overseas investigation by the American Consulate in Jamaica seems to be the most logical. These overseas investigations take at least six months to complete. We must await the findings of the American Consulate in Jamaica before the Naturalization

Examiner can make his decision. He must be satisfied that petitioner is in fact the daughter of Veda May Paulson and that Ouida Gordon and Veda May Paulson are one and the same and that no fraud is being committed by the petitioner.

I am informed by the Chief of Frauds of Investigations that the minimum time to complete such an investigation requires at least six months. All investigations must be completed before the Naturalization Examiner can make a decision on petitioner's application for citizenship.

It is therefore respectfully requested that the Service be granted at least a six month adjournment of the Notice of Motion to calendar this case for naturalization.

NINA E. CAMERON
District Counsel

Sworn to before me this 5th day
of August 1976.

cc. Ed Rhattigan
Naturalization Clerk
225 Cadman Plaza East
Brooklyn, New York

Judge George C. Pratt Chambers
U. S. District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York

Leon Rosen, Esq.
Attorney for Petitioner
60 East 42nd St.
New York, N.Y. 10017

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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LOIS HOPE SMALL and VEDA MAY
POULSON,

Plaintiffs,

DOCKET NO. 76 C 747

- against -

MEMORANDUM AND ORDER

MAURICE F. KILEY, District Director,
United States Immigration and
Naturalization Service; and LEONARD
P. CHAPMAN, Commissioner, Immigra-
tion and Naturalization Service,

Defendants.

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These motions came before the undersigned sitting in the Miscellaneous Part in the absence of Judge Neaher to whom this case was previously assigned. Plaintiff Small wants the Immigration and Naturalization Service to take more rapid action on her petition to become a naturalized citizen. She claims that once she becomes naturalized, then the Government will have no basis for deporting her mother, plaintiff Poulson.

The Government asserts that the court has no jurisdiction to review the matter and that there is no legal relationship between the naturalization of plaintiff Small and the deportation of plaintiff Poulson. They also claim there is a question as to whether Poulson is in truth the mother of

Small, but they say it will take at least six months for a field check to be completed. It is precisely this kind of delay against which plaintiffs complain in their action.

The several motions brought before the undersigned are disposed of as follows:

1. Defendants' motion to dismiss the complaint is adjourned and respectfully referred to Judge Neaher to be heard at a date to be set by him.

2. Plaintiff Small's motion to calendar her naturalization proceedings is adjourned and is respectfully referred to Judge Neaher to be heard at a date to be set by him.

3. Defendants' motion for a stay of depositions is granted, and the depositions of defendants Kiley and Chapman are hereby stayed until after determination by Judge Neaher of defendants' motion to dismiss.

4. Plaintiffs' motion for a preliminary injunction against further deportation proceedings is hereby granted, and said preliminary injunction is to continue in effect until 20 days after completion of the depositions of

AFFIDAVIT OF MAILING

STATE OF NEW YORK
COUNTY OF KINGS
EASTERN DISTRICT OF NEW YORK, ss:

CAROLYN N. JOHNSON, being duly sworn, says that on the 2nd
day of Decmeber, 1976, I deposited in Mail Chute Drop for mailing in the
U.S. Courthouse, Cadman Plaza East, Borough of Brooklyn, County of Kings, City and
State of New York, a JOINT APPENDIX
of which the annexed is a true copy, contained in a securely enclosed postpaid wrapper
directed to the person hereinafter named, at the place and address stated below:

LEON ROSEN, ESQ.

60 East 42nd Street

New York, New York 10017

Sworn to before me this
2nd day of December, 1976

Martha Scharf

Carolyn N. Johnson
CAROLYN N. JOHNSON